IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 518/2004
(Ota Ram Vs. State of Rajasthan & Anr.)

Date of Order : 13/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. J.P.Chhangani for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. B.S.Rathore for non-petitioner No.2.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner complainant has challenged the order dated 19.11.2003 passed by Sessions Judge, Sirohi (for short 'the revisional court' hereinafter) in Criminal Revision No.30/03, whereby the revisional court dismissed the revision petition filed by the petitioner against the order dated 8.1.2003 passed by Judicial Magistrate, Sirohi (for short 'the trial court' hereinafter) in Complaint Case No.374/2000.

By order dated 08.01.2003, the trial court dismissed the complaint filed by the petitioner complainant under Section

138 of the Negotiable Instruments Act, 1881 (for short 'the Act' hereinafter) on the ground that neither the complainant nor his counsel is present and therefore, the complaint is dismissed in default.

It is contended by learned counsel for the petitioner that the matter was fixed for reading over the substance of the accusation to the accused-non-petitioner on 8.1.2003. The accused-non-petitioner was present. The trial court instead of reading over the substance of the accusation, dismissed the complaint. The petitioner complainant was not required to do anything and due to absence of the petitioner complainant the trial would not have delayed. But the trial court without taking note of this fact, dismissed the complaint. Learned counsel for the petitioner has relied on decision of Hon'ble Supreme Court in Mohd. Azeem Vs. A. Venkatesh and Anr. 2003 Cr.L.R. (SC) 211, wherein on the similar facts, the Apex Court held that it should have been held to be a valid ground for restoration of the complaint and the complaint was restored.

Keeping in view the decision of Hon'ble Apex Court, in my view, the trial court as also the revisional court fell in error in not restoring the complaint.

Consequently, the criminal misc. petition is allowed.

The order impugned dated 8.1.2003 passed by the trial court and order dated 19.11.2003 passed by the revisional court affirming the order of the trial court are set aside and the complaint is restored to its original number. Parties to appear before the trial court on 21.8.2006.

(H.R.PANWAR),J.

Rp